IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1491 of 2007
In
SPECIAL CIVIL APPLICATION No. 17555 of 2007
With
LETTERS PATENT APPEAL No. 1492 of 2007
In SPECIAL CIVIL APPLICATION No. 17556 of 2007
With
LETTERS PATENT APPEAL No. 1493 of 2007
In SPECIAL CIVIL APPLICATION No. 17319 of 2007
With
CIVIL APPLICATION No. 9968 of 2007
In LETTERS PATENT APPEAL No. 1491 of 2007
With
CIVIL APPLICATION No. 9969 of 2007
In LETTERS PATENT APPEAL No. 1492 of 2007
With
CIVIL APPLICATION No. 9970 of 2007
In LETTERS PATENT APPEAL No. 1493 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALJIBHAI SHIVABHAI PRAJAPATI - Appellant(s)
Versus
GUJARAT PUBLIC SERVICE COMMISSION & 2 - Respondent(s)

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Appearance :

LPA No.1491 of 2007

MR PARESH UPADHYAY for Appellant(s) : 1,

MR DG SHUKLA for Respondent(s) : 1,
MS. ASMITA PATEL AGP for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3.

LPA No.1492 of 2007

MR PARESH UPADHYAY for Appellant.

MR DG SHUKLA for respondent No.1.

Ms. Varsha Brahmbhatt, AGP for respondent No.2.

Respondent No.3 – served.

LPA No. 1493 of 2007

MR PARESH UPADHYAY for appellant

MR DG SHUKLA for Respondent No.1.

MS BHAVIKA KOTECHA AGP for respondent No.2.

Respondent No.3 – served.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 01/08/2007

COMMON ORAL ORDER

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in instant batch of three intra-court appeals under Clause 15 of the Letters Patent is to the common order dated 23.7.2007 passed by the learned Single Judge in the three Special Civil Applications mentioned in the

title. The learned Single Judge has while issuing Rule in the petitions, negatived the prayer for interim relief. The common order passed by the learned Single Judge in the above mentioned three Special Civil Applications reads as under:

> "1. Heard learned advocate Mr. Paresh Upadhyay appearing on behalf of petitioners, learned advocate Mr. D.G. Shukla appearing on behalf of respondent No.1 and learned AGPs appearing on behalf of respondents – State Authorities.
>
> 2. Learned advocate Mr. Shukla filed affidavit-in-reply on behalf of respondent No.1. The copy thereof has been served to other side. The same is ordered to be taken on record.
>
> 3. The question involved in the present petitions requires detailed examination.

4. Hence, **RULE** returnable on **22nd August 2007**.

5. Learned advocate Mr. D.G. Shukla waives service of notice of rule on behalf of respondent No.1 – GPSC.

6. The petitioner has not proved strong prima facie case, so, mandatory interim order can be passed. The oral interview has been commenced from 23rd July 2007. The case of petitioner is not much clear but only arguable case is proved. Therefore, 'rule' is issued by this Court. If, by interim order, this Court may direct the other side to allow the petitioner in oral interview, which creates equity in favour of petitioners and which amounts to grant full relief. If, in one case, indulgence will be shown by this Court, then, similarly situated other candidates may approach this Court, which also creates chaos, confusion and

complications without deciding merits of the matters. If ultimately, Court may allow the petitions, then, Court can grant effective relief to the petitioners, but, in between, regular process of selection cannot be disturbed by allowing petitioners being not qualified as per respondent - GPSC. In case ultimately, petition will be allowed, then, Court can direct the respondent - GPSC to take interview and declared result and then, follow the procedure according to rules. At that time, GPSC cannot raise any objection. ***[See : AIR 1990 SC 867 Para 14 – 15*** and ***2006 AIR SCW 4773 Para 22]"***

2. The case of the appellants/petitioners in the petitions is as under:

2.1. Gujarat Public Service Commission issued an advertisement No.103 on 16.3.2006 inviting applications for recruitment on the post of District Education Officer and its equivalent

post in District Education Service Class-I (Administrative Branch). Details regarding educational qualification and experience of the appellants are as per the statement at Annexure C to the petitions and certificates were produced at Annexure D to the petitions. The appellants averred in the petition that they do possess requisite educational qualification and experience. The appellants had applied for the same. They were called for elimination test which they have passed.

2.2. On 30.6.2007 GPSC rejected the applications of the appellants on the ground that though the appellants have been through the elimination test, they do not meet with the criteria prescribed in the advertisement. It is the case of the appellants that on the face of the qualification and experience of the appellants, as against the requirement mentioned in the advertisement, it is illegal, arbitrary and discriminatory to say that the appellants are

not even eligible to compete in the examination and, therefore, they filed the petitions and prayed for the reliefs mentioned in the petitions.

2.3. At the time of admission hearing, the learned Single Judge observed that the question involved in the petitions requires detailed examination and hence issued rule but has negatived the prayer for the relief to direct GPSC to consider the case of the appellants for appointment, on merits, on the post of District Education Service Class-I (Administrative Branch), pursuant to advertisement No.103/2006-07, along with other eligible candidates, by permitting the appellants to appear for the interview, subject to outcome of the petitions, which has given rise to instant batch of three intra-court appeals at the instance of the original petitioners.

3. At the time of admission hearing of these

three appeals, this Court vide order dated 25.7.2007 issued noticed for final disposal in the appeals making it returnable on 1.8.2007 i.e., today. In the Civil Applications, the following relief was granted:

> "Having heard Mr. Paresh Upadhyay, learned advocate for the applicants in all the applications and having regard to the facts and circumstances emerging from record of the case and more particularly, the fact that interview has already commenced on 23rd July, 2007 which would continue upto 30th July, 2007, according to us, interest of justice would be served if we direct respondent no.1-Gujarat Public Service Commission to permit the applicants of all these applications to participate in the proposed interview for selection of District Education Service Class-I(Administrative Branch), pursuant to advertisement No.103/2006-07.
>
> The result of the applicants shall not be

published and shall be kept in a sealed cover. The applicants are allowed to participate in the interview, subject to result of Special Civil Applications Nos. 17555/2007, 17556/2007, 17319/2007 respectively."

4. Today when the appeals are called out for further hearing, Mr. Paresh Upadhyay, learned advocate for the appellants, has submitted that in compliance of the interim order passed by this Court, GPSC has sent communication dated 27.7.2007 to each of the appellants permitting them to participate in the interview for the selection and appointment on the post in District Education Service Class-I (Administrative Branch) pursuant to advertisement No.103/2006-07 along with other eligible candidates, subject to the outcome of the petition.

5. Having considered the submissions advanced by the learned Advocates appearing for the

parties and since the interim order passed by this Court on 25.7.2007 has been complied with by the GPSC, in our considered opinion, it would be in the fitness of things and in the interest of justice that we shall not express any final opinion on the merits when the petitions are pending before the learned Single Judge and that too when the learned Single Judge has expressed an opinion that the matters require consideration and rule was issued in each petition. Against the refusal to grant interim relief, this Court, at the admission stage, was of the view that respondent No.3, GPSC should be directed to allow the appellants to participate in the proposed interview for selection to the post in question and also ordered that the result of the appellants should be kept in sealed over, and it would be in the fairness of things if such limited relief is directed to be continued till final disposal of the main Special Civil Applications which are pending for adjudication before the learned Single Judge.

6. In aforesaid view of the matter, according to us, instant batch of three intra-court appeals deserves to be allowed to the extent by continuing interim relief granted earlier till final disposal of the three Special Civil Applications pending before the learned Single Judge.

7. For the foregoing reasons, these three Letters Patent Appeals succeed and accordingly they are allowed with no order as to costs. Resultantly, the interim relief granted by this Court vide order dated 25.7.2007 shall continue till final disposal of Special Civil Application Nos. 17555 of 2007, 17556 of 2007 and 17319 of 2007. It is further directed that result of the interview of the appellants, for the selection and appointment to the post in question, which has been kept in sealed cover, which is subject to the result of the petitions which are pending before the learned Single Judge, shall remain in sealed cover till final disposal of the three Special Civil Applications.

It would be also open for the appellants to make a request to the learned Single Judge for expeditious disposal of the three petitions which are pending for adjudication before him.

At the cost of repetition, we may make it clear that we have not expressed any opinion on the merits of the appeals and it would be for the learned Single Judge to consider the merits of the matters which are pending before him and decide the same strictly in accordance with law.

8. As the appeals are allowed, no orders are required to be passed in Civil Applications. Hence they are disposed of accordingly with no order as to costs. Rule issued in each application is discharged.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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